

Message Text

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14

ACTION ARA-20

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R 282315Z SEP 73

FM AMEMBASSY MANAGUA

TO SECSTATE WASHDC 2559

INFO AMEMBASSY GUATEMALA

AMEMBASSY SAN JOSE

AMEMBASSY SAN SALVADOR

AMEMBASSY TEGUCIGALPA

USCINCSO

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USCINCSO FOR POLAD

E. O. 11652: N/A

TAGS: PINT, PINS, NU

SUBJ: GON PROPOSES REVISION OF LAWS DEALING WITH "UNJURY AND
CALUMNY"

1. SUMMARY. PERSISTENT RUMORS THAT THE GON WAS CONTEMPLATING MEASURES DIRECTED AT ITS MEDIA CRITICS FUELED BY THREATS FROM ASSEMBLY PRESIDENT HUECK THAT HE WOULD INTRODUCE A LIBEL LAW CULMINATED SEPTEMBER 26 WITH A SURPRISING AND UNUSUAL GON INITIATIVE. EXPRESSING THE GON'S DEVOTION TO FREEDOM OF THE PRESS, MINISTER OF GOVERNMENT LEANDRO MARIN FORMALLY SUBMITTED TO THE CONSTITUENT ASSEMBLY A PROPOSAL TO INVALIDATE EXISTING LAWS REQUIRING RECTIFICATION AND CLARIFICATION OF ALLEGEDLY FALSE PRESS REPORTS. LEST THIS GESTURE BE MISINTERPRETED, MARIN SIMULTANEOUSLY PROPOSED EXTENSIVE AMENDMENTS TO THE SECTIONS OF THE PENAL CODE WHICH DEAL WITH "UNJURY" AND "CALUMNY." THESE AMENDMENTS SOME OF WHICH ARE VAGUELY WORDED APPEAR TO ADMIT EXTREMELY BROAD INTERPRETATIONS OF THESE OFFENSES WHICH CAN BE COMMIT-

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TED BY THE MEDIA, INDIVIDUALS OR ENTITIES. THEY ALSO SUBSTITUTE

SUMMARY TRIAL BY JUDGE FOR THE PREVIOUS JURY TRIAL REQUIREMENT AND PROVIDE FOR STEEPLY INCREASED FINES, RANGING TO A MAXIMUM IN SOME CASES OF 43 THOUSAND DOLLARS FOR A SINGLE OFFENSE. THE ASSEMBLY HAS REFERRED THE PROPOSAL TO THE SUPREME COURT FOR AN ADVISORY OPINION AS TO ITS CONSTITUTIONALITY SINCE THE COURT IS ALREADY CONSIDERING A GENERAL REFORM OF THE PENAL CODE. THE GON INITIATIVE HAS PROVOKED ALMOST UNANIMOUS DENUNCIATIONS FROM THE MEDIA AND OPPOSITION ELEMENTS AS A DIRE THREAT TO FREEDOM OF THE PRESS AND INFORMATION. END SUMMARY.

2. THE FOLLOWING IS A SUMMARY OF THE PROPOSED AMENDMENTS.

A. A PERSON WHO BY ANY EFFECTIVE MEANS OF DIFFUSION FALSELY ACCUSES ANOTHER OF SOMETHING THAT IS A CRIME OR CAN BE OFFICIALLY PROSECUTED COMMITS CALUMNY AND CAN BE PUNISHED BY A FINE OF 5 TO 200 THOUSAND CORDOBAS. IF THE FALSE IMPUTATION IS MADE IN THE PRESS, A PUBLICATION, PUBLIC ASSEMBLY, MOTION PICTURE/RECORDING, OR ON RADIO OR TELEVISION OR SIMILAR MEANS THE FINE CAN BE INCREASED BY HALF. IF NOT PROPAGATED BY THESE MEANS, THE FINE RANGES FROM 100 TO 1 THOUSAND CORDOBAS.

B. ONE ACCUSED OF CALUMNY IS EXEMPT FROM PUNISHMENT IF HE CAN PROVE THE TRUTH OF THE IMPUTATION. BUT THIS EXEMPTION DOES NOT APPLY WHERE THE ACCUSED HAS BEEN LEGALLY ABSOLVED OF THE CHARGE IN NICARAGUA OR ABROAD OR IF THE IMPUTATION CONCERNS HIS MARRIED OR FAMILY LIFE OR AN OFFENSE WHICH CANNOT BE OFFICIALLY PROSECUTED.

C. A PERSON WHO BY AN EFFECTIVE MEANS OF DIFFUSION ATTACKS THE HONOR, REPUTATION OR DIGNITY OF A PERSON OR REVEALS HIS FAULTS OR VICES WHICH ARE PURELY PERSONAL OR WHICH MIGHT EXPOSE HIM TO HATE, RIDICULE OR PUBLIC EMBARRASSMENT COMMITS THE CRIME OF INJURY AND CAN BE PUNISHED BY A FINE OF 2 TO 50 THOUSAND CORDOBAS. INJURY ALSO INCLUDES DEFAMATION OF THE DEAD OR RELIGIOUS SYMBOLS, OR REFERENCES TO CHASTITY OF WOMEN, PHYSICAL DEFECTS, REPUGNANT DISEASES OF "DECEITFUL ALLUSIONS CAPABLE OF INDUCING A SUSPICION ABOUT THE INTEGRITY, CREDIT OR FINANCIAL SITUATION OF INSTITUTIONS, PROFESSIONS, OFFICES OR BUSINESSES LEGALLY OPERATING IN THE REPUBLIC." IF THE INJURY IS MADE IN THE PRESENCE OF THE OFFENDED OR BY LIMITED OFFICIAL USE

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PUBLIC MEANS, THE FINE CAN BE INCREASED BY HALF.

D. INJURY DOES NOT INCLUDE "CRITICISMS OF A POLITICAL NATURE OF THE ACTS OF THE GOVERNMENT, ITS INSTITUTIONS AND ORGANS; OR CRITICISMS OF THE PHILOSOPHY OF THE LAWS OR CONDUCT OF PUBLIC OFFICIALS, PROVIDED THAT SUCH CRITICISM DOES NOT DAMAGE THE HONOR, REPUTATION OR DIGNITY OF THE PERSONS INVOLVED."

E. ONE WHO DIVULGES FALSE CHARGES AGAINST A PERSON OR ENTITY OR AUTHORITY WHICH CAN GRAVELY DAMAGE PUBLIC CONFIDENCE IN THEIR CREDIBILITY CAN BE PUNISHED BY A FINE OF 1 TO 100 THOUSAND CORDOBAS.

F. THOSE WHO DIFFUSE INJURY OR CALUMNY BY ANY PUBLIC MEANS ARE EQUALLY RESPONSIBLE AND ARE OBLIGATED TO PUBLISH WITHIN 24 HOURS OF BEING ADJUDGED GUILTY A RETRACTION OR THE TEXT OF SENTENCE OF GUILT IF THE OFFENDED REQUESTS; FAILURE TO DO SO INCREASES THE FINE BY HALF.

G. ALSO RESPONSIBLE FOR CRIMES OF INJURY OR CALUMNY ARE "REPRESENTATIVES IN NICARAGUA OF FOREIGN NATURAL OR JURIDICAL PERSONS OR ORGANIZATIONS WHICH CIRCULATE REPORTS OR DEFAMATORY NOTICES TO BE REPRODUCED IN THE COUNTRY."

H. IF THE INJURY OR CALUMNY IS AGAINST ORGANISMS OR OFFICIALS OF THE GOVERNMENT OR RELIGIOUS CULTS, THE PUBLIC PROSECUTOR

CAN INSTITUTE THE LEGAL ACTION. WHEN THE INJURY OR CALUMNY

IS AGAINST FOREIGN CHIEFS OF STATE OR DIPLOMATIC REPRESENTATIVES ACCREDITED IN NICARAGUA OR OTHERS WHO ENJOY IMMUNITY THE GOVERNMENT, WHEN REQUESTED BY THE OFFENDED, CAN REQUIRE THE PUBLIC PROSECUTOR TO PRESS CHARGES EVEN THOUGH THE ACCUSATION CONCERNS THE PERSON'S PRIVATE CHARACTER.

I. PERSONS RESPONSIBLE FOR CRIMES OF INJURY OR CALUMNY CAN BE FREED OF THE FINE IF THEY EXPRESSLY RETRACT THE CHARGES TO THE SATISFACTION OF THE OFFENDED.

J. PERSONS AND ENTITIES ACCUSED OF INJURY OR CALUMNY BY PUBLIC MEANS MUST DEPOSIT THE FINE WITHIN 24 HOURS OF BEING NOTIFIED

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OR THEIR OPERATIONS CAN BE SUSPENDED UNTIL THEY DO SO.

K. APPEAL OF CONVICTIONS MUST BE MADE WITHIN 24 HOURS OF SENTENCING AND THE FINE DEPOSITED.

L. CRIMINAL CHARGES OF INJURY OR CALUMNY WILL BE HANDLED BY THE APPROPRIATE DISTRICT CRIMINAL JUDGE BY SUMMARY COURT PROCEDURE (I. E. TRIAL BY JUDGE RATHER THAN JURY). DAMAGES AND PREJUDICE CHARGES WILL BE HANDLED UNDER SUMMARY CIVIL PROCEDURES.

3. COMMENT: THE GON'S ACTION HAS FURTHER PROVOKED MEDIA AND OPPOSITION ELEMENTS WHO WERE ALREADY MOBILIZED TO COMBAT AN ANTICIPATED LIBEL LAW (MANAGUA 3852) AND THEIR OUTRAGED CRIES OF REPRESSION AND THREATS TO PRESS FREEDOM

WILL UNDOUBTEDLY CONTINUE AS LONG AS THE PROPOSAL IS UNDER
ACTIVE CONSIDERATION. IF AND WHEN THE AMENDMENTS ARE
ENACTED THEY MAY WELL BE MODIFIED, PARTICULARLY IF THE
SUPREME COURT SO RECOMMENDS.
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